

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

OP(C).No. 2148 of 2014 (O)

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(AGAINST THE ORDER IN I.A.NO.415/2014 IN OS.NO. 141/2012 OF MUNSIF  
MAGISTRATE COURT, MANNARKAD DATED 7/08/2014 )  
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PETITIONER/PETITIONER/DEFENDANT:-  
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RASHEED, AGED 25 YEARS,  
S/O.M.RAJAN, RASHEED MANZIL, KAKKAD P.O.,  
KANDAMKULAM DESOM, PERUNADU VILLAGE,  
RANNI TALUK, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENT/RESPONDENT/PLAINTIFF:-  
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PAPPAMMAL @ PAPPATHI,  
W/O.LATE VELUSAMY, NARSIMUKKU,  
AGALI AMSOM AND DESOM,  
MANNARKKAD TALUK, PALAKKAD - 678 024.

BY ADV. SRI.K.MOHANAKANNAN  
SMT.A.R.PRAVITHA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD  
ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

sts

OP(C).No. 2148 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. A TRUE COPY OF THE PLAINT IN O.S.NO.141/2012 ON THE FILE OF THE HON'BLE COURT OF MUNSIF - MAGISTRATE, MANNARKKAD DATED 22.11.2012.
- EXHIBIT P2. A TRUE COPY OF THE WRITTEN STATEMENT DATED 15.03.2014 IN O.S.NO.141/2012 ON THE FILE OF THE HON'BLE COURT OF MUNSIF - MAGISTRATE, MANNARKKAD.
- EXHIBIT P3. A TRUE COPY OF THE REPORT FILED BY N.BINCY, ADVOCATE COMMISSIONER IN O.S.NO.141/2012 ON THE FILE OF THE HON'BLE COURT OF MUNSIF-MAGISTRATE, MANNARKKAD DATED 01.12.2012.
- EXHIBIT P4. A TRUE COPY OF THE PETITION IN I.A.NO.415/2014 IN O.S.NO.141/2012 ON THE FILE OF THE HON'BLE COURT OF MUNSIF-MAGISTRATE, MANNARKKAD.
- EXHIBIT P5. A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT HEREIN TO EXT.P4.
- EXHIBIT P6. A TRUE COPY OF THE ORDER DATED 07.08.2014 IN I.A.NO.415/2014 IN O.S.NO.141/2012 ON THE FILE OF THE HON'BLE COURT OF MUNSIF - MAGISTRATE, MANNARKKAAD.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

sts

**P. BHAVADASAN, J.**

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O.P.(C). No. 2148 of 2014  
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Dated this the 9<sup>th</sup> day of January, 2015.

**JUDGMENT**

Unable to assail the order impugned effectively so as to persuade this Court to interfere with the order, learned counsel then prayed that there may be a direction to expedite the trial of the suit.

2. The matter relates to 10 acres of land which the plaintiff claims to be in his possession and enjoyment. The defendant says that by virtue of two documents, he obtained 8.47 acres from the plaintiff and the present attempt is to trespass into that property.

3. The petitioner before this Court filed I.A. 415 of 2014 under Order 39 Rule 7 of the Code of Civil Procedure on the pretext that he is interested in having the property preserved. The court below finding that the petitioner has not

been successful in showing that the two properties are different properties and also there is no evidence of possession on behalf of the petitioner dismissed the petition.

4. Learned counsel appearing for the petitioner very vehemently argued that the provision which is made mention of in the petition enables the petitioner to seek preservation of the property.

5. No doubt it is true. But preservation by whom is the question. The plaintiff has categorically asserted that he is in possession of entire 10 acres and the defendant asserted that he is in possession of 8 and odd acres out of 10 acres. If the defendant is claiming to be in actual possession of the property, how the plaintiff can be asked to preserve the property. On that sole ground, this petition has to fail.

However, there will be a direction to the Munsiff-Magistrate Court, Mannarkkad to take up and dispose of O.S. 141 of 2012 in accordance with law as

expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

This Original Petition is disposed of as above.

P. BHAVADASAN,  
JUDGE

sb.